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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,395	02/25/2002	Claude Andre	408.106A	6873

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EXAMINER

WARE, DEBORAH K

ART UNIT PAPER NUMBER

1651

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/084,395

Applicant(s)

ANDRE ET AL.

Examiner

Deborah K. Ware

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12-15 and 20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-10, 12-15 and 20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-10, 12-15 and 20 are presented for reconsideration on the merits.  
Claims 11 and 16-19 have been canceled.

### **AMENDMENT**

The remarks and arguments and declaration filed May 13, 2005, have been received and entered of record. The extension of time and changes of address filed May 13, 2005, May 12, 2005, and June 14, 2005, respectively, have also been received and entered, the latter change of address request filed June 14, 2005 has been entered. Also, the corrected amendment to the claims has been entered and all pending claims should be correct, and the Examiner greatly acknowledges Applicants' efforts. The declaration has been considered and is discussed below in the response to Applicants' arguments. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 and 4-5 remain rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rodriguez et al., see the previously submitted PTO-892 Form.

Claims are drawn to a medium for cultivating a producing mites comprising amino acids in lyophilized form.

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Rodriguez et al teach a medium for cultivating a producing mites comprising amino acids in lyophilized form. See the abstract and page 979, last 8 lines and page 981, lines 4-6. Also note Table 2, page 983.

The claims are identical to the disclosed subject matter and are therefore considered to be anticipated by the teachings therein.

However, in the alternative that there is some unidentified claim characteristic for which provides for some difference between the claims and cited disclosure then such difference is considered to be so slight as to render the claims obvious. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to provide for a medium comprising lyophilized amino acids for which to culture mites. The claims would have been obvious in the absence of some unexpected successful results. Therefore, the claims are rendered obvious in the alternative over this cited reference.

### ***Response to Arguments***

The argument that the analysis of Rodriguez et al is incorrect and that animal or human sources for amino acid content are conventional in the art is noted but not persuasive. Notably, *Kropa v. Robie*, 187 F.2d at 152, 88 USPQ2d at 480-81 which cites that a preamble is not a limitation where a claim is directed to a product. The medium as claimed herein only requires a plurality of lyophilized amino acids. The cited reference applied against the claims and set forth above, clearly teaches a plurality of lyophilized amino acids formulated in a diet and the same useful for cultivating mites. Note page 982, Table 1, and page 983, Table 2, and page 981, lines 4 and lines 34-36.

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The amino acids may be obtained commercially as well, and the diet contains salts, see page 981, lines 30-36.

A formulated diet (i.e. medium) for the mites is obtained by the cited reference. Therefore, the argument that a medium is not disclosed is not deemed persuasive. Cultivation of mites if not clearly taught is intrinsic to the disclosed formulated diet, however, the claims are directed to a composition and not a method for cultivating mites. Thus, a mite feeding diet containing lyophilized amino acids is considered to be at the very least inherent to the cited disclosure, if one can not interpret the references as a clear teaching of the same. Further, Applicants' own arguments indicate that Rodriguez et al is a culturing medium, note page 10 of Applicants' response filed May 13, 2005, see line 21.

Also, the argument that the culturing medium of Rodriguez et al is in liquid form, and hence impossible for it to have a plurality of amino acids in lyophilized form is noted; however, Rodriguez et al clearly teach that the lyophilized amino acids are dissolved in sucrose, see page 981, line 4, and Applicants' claims do not omit the presence of other ingredients or a medium in liquid form but merely a medium comprising a plurality of amino acids in lyophilized form. This does not necessarily mean that the medium itself is in lyophilized form, and furthermore, it is conventionally known that a medium can be in liquid or solid forms. Thus, it is not impossible for a liquid medium to have a plurality of lyophilized amino acids, especially if they have not been completely dissolved. The reference is silent with respect to complete dissolution of a plurality of lyophilized amino acids.

While Applicants' declaration has been considered it does not overcome the teachings of the cited reference of which do not appear to be even discussed by the declaration, but instead a comparison of experimental results from Applicants' specification, referenced as page 2, lines 11-15, in the instant declaration. The evidence purported by Applicants' own specification does not obviate the cited reference against the claims. The argument that the goal as illustrated by the declaration and Applicants' own specification for providing a method for cultivating and producing mites that minimizes the risk of the presence of infectious agents of animal or human origin is noted; however, the claims are not directed to this subject matter as argued. Therefore, the arguments and evidence as set forth in the declaration are not deemed persuasive.

Further, the declaration wherein Applicants' replacement of human scales by a mixture of amino acids that have not been submitted to any treatment such as lyophilizing, to show the impact upon culture yields does not remove the prior art because the evidence as shown by the declaration is not commensurate in scope with the claimed subject matter. There is clear teaching in the art that a formulated diet comprising lyophilized amino acids impact the nutritional needs of the mite. Applicant's arguments filed May 13, 2005, have been fully considered but they are not persuasive and the claims remain rejected for reasons of record and those as discussed above.

***Claim Rejections - 35 USC § 103***

Claims 2-3, 6-10, 12-15 and 20 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez et al, cited above, in view of newly cited Singh, Yi et al and Miyamoto et al, all cited of record on previously submitted PTO-892 Form.

Claims are further drawn to grinding amino acids in proportional amounts of at least 50%, reproducing a spectrum of amino acids that make up keratin or the stratum corneum, shrimp eggs or soya. Further, the medium comprises yeast, calcium chloride, magnesium sulfphate, sodium hydroxide, potassium chloride and potassium hydroxide. Further, the mites can be selected from Dermatophagoids pteronyssinus and Blomia tropicalis.

Rodriguez et al is discussed above.

Singh teaches salts such as calcium chloride, magnesium sulfphate, sodium hydroxide, potassium chloride and potassium hydroxide, and further teaches the presence of vitamins and biotin, see page 483, lines 11-20.

Yi et al and Miyamoto et al clearly teach Dermatophagoids pteronyssinus and Blomia tropicalis. See pages 133, line 2 and 189, line 1 respectively.

The claims differ from Rodriguez et al in that specific salts are not disclosed and neither are the specific species of mites.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to cultivate mites on a medium containing amino acids, lyophized amino acids in the amounts set forth by Rodriguez et al and further to include



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the salts as disclosed by Singh to cultivate the mites as disclosed by Chew et al and miyamoto et al. Clearly one of skill in the art would have been motivated to select for these amounts and amino acids, salts, mites because the prior art teaches successful results have been obtained. Therefore, in the absence of persuasive evidence to the contrary and absence of unexpected successful results the claims are deemed *prima facie* obvious over the cited prior art.

### ***Response to Arguments***

Applicant's arguments filed May 13, 2005, have been fully considered but they are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Therefore, in the absence of persuasive evidence to the contrary and absence of unexpected successful results the claims remain *prima facie* obvious over the cited prior art.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


All claims fail to be patentably distinguishable over the state of the art discussed above. Therefore, the claims are properly rejected.


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Deborah K. Ware  
January 19, 2006

  
DAVID M. NAFF  
PRIMARY EXAMINER  
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